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9 individually

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 SAM LUTFI, an individual,

13
14 Plaintiff,

15 vs.

16 LYNN IRENE SPEARS, an
17 individual; JAMES PARNELL
18 SPEARS, an individual; BRITNEY
JEAN SPEARS, an individual; and
19 DOES 1 through 25 inclusive,

20 Defendants.
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FILED
LOS ANGELES SUPERIOR COURT

OCT 24 2012
JOHN A. CLARKE, CLERK
BY K. TOLLACK, DEPUT

CASE NO. BC 406904

[Case Assigned For All Purposes To
Hon. Soussan G. Bruguera, Dept. 71]

**DEFENDANT JAMES PARNELL
SPEARS' MEMORANDUM OF POINTS
AND AUTHORITIES RE EXHIBIT 11**

Dept.: 71

Trial Date: Oct. 2, 2012

10/26/2012

MEMORANDUM OF POINTS AND AUTHORITIES

1. EXHIBIT 11 IS NOT RELEVANT AND IS LIKELY TO MISLEAD THE JURY

Only relevant evidence is admissible. Evidence Code section 350. Furthermore, Evidence Code section 352 provides that the Court may exclude evidence "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

In this case, Plaintiff's conclusion that Exhibit 11, a purported December 17, 2007, text message, *might* be related to an argument that occurred six weeks later is speculative and conjectural. And, in fact, it is refuted by the evidence: even Plaintiff concedes that the alleged battery of January 28, 2008, occurred on the same evening as Plaintiff's public argument with Defendant's daughter, Britney, an event that was broadcast immediately on television and the internet. That argument was the precipitating event.

Exhibit 11, the purported text message from *six weeks before* the claimed battery, has absolutely no connection to the events of January 28, 2008. Therefore, allowing admission of Exhibit 11 will only mislead or confuse the jury by suggesting otherwise.

2. EXHIBIT 11 CAN *NOT* BE AUTHENTICATED BY THE CLAIMED EXCHANGE OF TEXTS BECAUSE PLAINTIFF ACTUALLY TESTIFIED THAT HE HAS NOT RECOLLECTION OF EXCHANGING ANY TEXTS WITH JAMES SPEARS.

Lutfi argues that Exhibit 11 may be authenticated by proof that it was received in reply to a message previously sent from the other person. However, there is no such proof. At his deposition, Plaintiff testified that he had absolutely no recollection of what he was doing before or after he received the text message. He certainly did not recall

1 speaking or exchanging texts with James Spears either before or after he received this
2 message.

3 The document cannot be properly authenticated.

4 DATED: October 24, 2012

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7 BY: _____
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